

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1025

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 36-7-4-602 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 602. (a) The following procedure applies to a proposal to adopt an initial zoning ordinance (or to adopt a replacement zoning ordinance after repealing the entire zoning ordinance, including amendments and zone maps) for a jurisdiction:

- (1) The plan commission must initiate the proposal.
- (2) The plan commission must prepare the proposal so that it is consistent with section 601 of this chapter.
- (3) The plan commission and the legislative body both must comply with section 603 of this chapter.
- (4) The plan commission must give notice and hold a public hearing under section 604 of this chapter.
- (5) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.
- (6) The legislative body must consider the proposal under section 606 of this chapter, and section 606 **of this chapter** governs whether the proposal is adopted or defeated.
- (7) If the proposal is adopted under section 606 of this chapter, the plan commission must print (and publish, if required) the ordinance under section 610 of this chapter.
- (8) The ordinance takes effect as described in section 610 of this

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chapter.

(b) After the zoning ordinance for a jurisdiction has been adopted as described in subsection (a), the following procedure applies to a proposal to amend or partially repeal the text (not zone maps) of the ordinance:

- (1) The plan commission may initiate the proposal. (Under the advisory planning law or the area planning law, any participating legislative body also may initiate the proposal and require the plan commission to prepare it.)
- (2) The plan commission must prepare the proposal so that it is consistent with section 601 of this chapter.
- (3) The plan commission and the legislative body both must comply with section 603 of this chapter.
- (4) The plan commission must give notice and hold a public hearing under section 604 of this chapter.
- (5) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.
- (6) The legislative body must consider the proposal under section 607 of this chapter, and section 607 **of this chapter** governs whether the proposal is adopted or defeated.
- (7) If the proposal is adopted under section 607 of this chapter, the plan commission must print the amendments to the zoning ordinance under section 610 of this chapter.
- (8) The amendments take effect as described in section 610 of this chapter.

(c) After the zoning ordinance for a jurisdiction has been adopted as described in subsection (a), the following procedure applies to a proposal to change the zone maps (whether by incorporating an additional map or by amending or deleting a map) incorporated by reference into the ordinance:

- (1) The proposal may be initiated either:
 - (A) by the plan commission; or
 - (B) by a petition signed by property owners who own at least fifty percent (50%) of the land involved.
 (Under the advisory planning law or the area planning law, any participating legislative body also may initiate the proposal and require the plan commission to prepare it.)
- (2) The plan commission or petitioners must prepare the proposal so that it is consistent with section 601 of this chapter.
- (3) The plan commission and the legislative body both must comply with section 603 of this chapter.
- (4) The plan commission must give notice and hold a public



hearing under section 604 of this chapter.

(5) The plan commission must certify the proposal to the legislative body under section 605 of this chapter.

(6) **Except as provided in subdivision (7),** the legislative body must consider the proposal under section 608 of this chapter, and section 608 **of this chapter** governs whether the proposal is adopted or defeated.

(7) If the alternate procedure in section 608.7 of this chapter is adopted, that section governs whether the proposal is adopted or defeated after consideration by:

(A) the plan commission under section 608.7 of this chapter; or

(B) the legislative body under section 608 of this chapter.

~~(7)~~ (8) If the proposal is adopted under section 608 **or 608.7** of this chapter, the plan commission must update the zone maps that it keeps available under section 610 of this chapter.

~~(8)~~ (9) The zone map changes take effect as described in section 610 of this chapter.

SECTION 2. IC 36-7-4-604 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 604. (a) Before the plan commission certifies a proposal to the legislative body under section 605 of this chapter, the plan commission must hold a public hearing under this section.

(b) The plan commission shall give notice of the hearing by publication under IC 5-3-1. The notice must state:

(1) the time and place of the hearing;

(2) either:

(A) in the case of a proposal under section 606 or 607 of this chapter, the geographic areas (or zoning districts in a specified geographic area) to which the proposal applies; or

(B) in the case of a proposal under section 608 of this chapter, the geographic area that is the subject of the zone map change;

(This subdivision ~~(2)~~ does not require the identification of any real property by metes and bounds.)

(3) either:

(A) in the case of a proposal under section 606 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire text of the ordinance);

(B) in the case of a proposal under section 607 of this chapter, a summary (which the plan commission shall have prepared) of the subject matter contained in the proposal (not the entire



- text) that describes any new or changed provisions; or
- (C) in the case of a proposal under section 608 of this chapter, a description of the proposed change in the zone maps;
- (4) if the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions;
- (5) the place where a copy of the proposal is on file for examination before the hearing;
- (6) that written objections to the proposal that are filed with the secretary of the commission before the hearing will be considered;
- (7) that oral comments concerning the proposal will be heard; and
- (8) that the hearing may be continued from time to time as may be found necessary.

(c) The plan commission shall also provide for due notice to interested parties at least ten (10) days before the date set for the hearing. The commission shall by rule determine who are interested parties, how notice is to be given to interested parties, and who is required to give that notice. However, if the subject matter of the proposal abuts or includes a county line (or a county line street or road or county line body of water), then all owners of real property to a depth of two (2) ownerships or one-eighth (1/8) of a mile into the adjacent county, whichever is less, are interested parties who must receive notice under this subsection.

(d) The hearing must be held by the plan commission at the place stated in the notice. The commission may also give notice and hold hearings at other places within the county where the distribution of population or diversity of interests of the people indicate that the hearings would be desirable. The commission shall adopt rules governing the conduct of hearings under this section.

(e) A zoning ordinance may not be held invalid on the ground that the plan commission failed to comply with the requirements of this section, if the notice and hearing substantially complied with this section.

(f) The files of the plan commission concerning proposals are public records and shall be kept available at the commission's office for inspection by any interested person.

(g) METRO. In the case of a proposal to amend a zoning map under section 608 of this chapter or in the case of a proposed approval of a development plan required by a zoning ordinance as a condition of development, a person may not communicate before the hearing with any hearing officer, member of the historic preservation commission,



or member of the plan commission with intent to influence the officer's or member's action on the proposal. Before the hearing, the staff may submit a statement of fact concerning the physical characteristics of the area involved in the proposal, along with a recital of surrounding land use and public facilities available to serve the area. The staff may include with the statement an opinion of the proposal. The statement must be made a part of the file concerning the proposal not less than six (6) days before the proposal is scheduled to be heard. The staff shall furnish copies of the statement to persons in accordance with rules adopted by the commission.

(h) METRO. In the case of a proposal to amend a zoning map under section 608 **or 608.7** of this chapter, this subsection applies if the proposal affects only real property within the corporate boundaries of an excluded city. Notwithstanding the other provisions of this section, the legislative body of the excluded city may decide that the legislative body rather than the plan commission should hold the public hearing prescribed by this section. Whenever the plan commission receives a proposal subject to this section, the plan commission shall refer the proposal to the legislative body of the excluded city. At the legislative body's first regular meeting after receiving a referred proposal, the legislative body shall decide whether the legislative body will hold the public hearing. Within thirty (30) days after making the decision to hold the hearing, the legislative body shall hold the hearing, acting for purposes of this section as if the legislative body is the plan commission. The legislative body shall then make a recommendation on the proposal to the plan commission. After receiving the excluded city legislative body's recommendation (or at the end of the thirty (30) day period for the public hearing if the proposal receives no recommendation), the plan commission shall meet and decide whether to make a favorable recommendation on the proposal. ~~If the proposal receives a~~ **The favorable recommendation, from the unfavorable recommendation, or no recommendation of the plan commission on** the proposal shall be certified to the county legislative body as provided in section 605 of this chapter.

(i) Before a proposal involving a structure regulated under IC 8-21-10 may become effective, the plan commission must have received:

- (1) a copy of:
 - (A) the permit for the structure issued by the Indiana department of transportation; or
 - (B) the Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; and



(2) evidence that notice was delivered to a public use airport as required in IC 8-21-10-3 not less than sixty (60) days before the proposal is considered.

SECTION 3. IC 36-7-4-608, AS AMENDED BY P.L.88-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 608. (a) This section applies to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance.

(b) If the proposal is not initiated by the plan commission, it must be referred to the commission for consideration and recommendation before any final action is taken by the legislative body. On receiving or initiating the proposal, the commission shall, within sixty (60) days, hold a public hearing in accordance with section 604 of this chapter. Within ten (10) business days after the commission determines its recommendation (if any), the commission shall certify the proposal under section 605 of this chapter.

(c) METRO. This subsection applies if the proposal receives a favorable recommendation, an unfavorable recommendation, or no recommendation from the plan commission:

(1) At the first regular meeting of the legislative body:

(A) after the proposal is certified under section 605 of this chapter; **or**

(B) **after the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, if:**

(i) **the alternate procedure in section 608.7 of this chapter is adopted; and**

(ii) **the legislative body makes the final determination on the proposal upon the request of an aggrieved person or the legislative body's own initiative under section 608.7(c) of this chapter;**

the legislative body may, by a majority of those voting, schedule the proposal for a hearing on a date not later than its next regular meeting. The legislative body member in whose district the parcel of real property under consideration is located may submit a request to the president of the legislative body that the proposal be considered under this subsection.

(2) If the legislative body fails to schedule the proposal for a hearing under subdivision (1), the ordinance takes effect as if it had been adopted at the first regular meeting of the legislative body:

(A) after the proposal is certified under section 605 of this chapter; **or**



(B) after the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, if:

- (i) the alternate procedure in section 608.7 of this chapter is adopted; and**
- (ii) the legislative body makes the final determination on the proposal upon the request of an aggrieved person or the legislative body's own initiative under section 608.7(c) of this chapter.**

(3) For purposes of this subdivision, the final action date for a proposal is the date thirty (30) days after the date that the proposal is certified under section 605 of this chapter, or the date of the second regular meeting after the proposal is certified under section 605 of this chapter, whichever is later. **However if:**

(A) the alternate procedure in section 608.7 of this chapter is adopted; and

(B) the legislative body makes the final determination on the proposal upon:

- (i) the request of an aggrieved person; or**
- (ii) the legislative body's own initiative;**

under section 608.7(c) of this chapter;

the final action date for a proposal is the date of the second regular meeting after the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter. If the legislative body schedules the proposal for a hearing under subdivision (1) but fails to act on it by the final action date, the ordinance takes effect as if it had been adopted (as certified) on the final action date. However, the period of time ~~from~~ **after** certification under section 605 of this chapter, **or after the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter,** to the final action date may be extended by the legislative body, with the consent of the initiating plan commission or the petitioning property owners. If the legislative body fails to act on the proposal by the final action date (as extended), the ordinance takes effect as if it had been adopted (as certified) on that extended final action date.

(4) If the legislative body schedules the proposal for a hearing under subdivision (1), it shall announce the hearing during a meeting and enter the announcement in its memoranda and minutes. The announcement must state:

- (A) the date, time, and place of the hearing;**
- (B) a description of the proposed changes in the zone maps;**
- (C) that written objections to the proposal filed with the clerk of the legislative body or with the county auditor will be heard;**



and

(D) that the hearing may be continued from time to time as may be found necessary.

(5) If the legislative body rejects the proposal at a hearing scheduled under subdivision (1), it is defeated.

(d) METRO. The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (c)(5).

(e) ADVISORY–AREA. The legislative body shall vote on the proposal within ninety (90) days after:

(1) the plan commission certifies the proposal under section 605 of this chapter; **or**

(2) the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, if:

(A) the alternate procedure in section 608.7 of this chapter is adopted; and

(B) the legislative body makes the final determination on the proposal upon:

(i) the request of an aggrieved person; or

(ii) the legislative body's own initiative;

under section 608.7(c) of this chapter.

(f) ADVISORY–AREA. This subsection applies if the proposal receives a favorable recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after:

(A) the proposal is certified under section 605 of this chapter;

or

(B) the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, if:

(i) the alternate procedure in section 608.7 of this chapter is adopted; and

(ii) the legislative body makes the final determination on the proposal upon the request of an aggrieved person or the legislative body's own initiative under section 608.7(c) of this chapter;

(or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) **Except as provided in subdivision (5), if the legislative body**



fails to act on the proposal within ninety (90) days after certification, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(5) This subdivision applies if:

(A) the alternate procedure in section 608.7 of this chapter is adopted; and

(B) the legislative body makes the final determination on the proposal upon:

(i) the request of an aggrieved person; or

(ii) the legislative body's own initiative;

under section 608.7(c) of this chapter.

If the legislative body fails to act on the proposal within ninety (90) days after the date of the notice under section 608.7(b)(1) or 608.7(b)(2) of this chapter, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after the date of the notice.

(g) **ADVISORY—AREA.** This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) If the legislative body fails to act on the proposal within ninety (90) days after certification, it is defeated.

(h) **ADVISORY—AREA.** The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (f)(3), (g)(3), or (g)(4).

SECTION 4. IC 36-7-4-608.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 608.7. (a) A unit may adopt the alternate procedure set forth in this section to apply to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance.

(b) The plan commission shall comply with section 608(b) of this chapter and certify a favorable recommendation, unfavorable recommendation, or no recommendation to the legislative body



under section 605 of this chapter. Except as provided in subsection (c), if the plan commission makes:

(1) a favorable recommendation on the proposal, the proposal (as certified) takes effect as other ordinances:

(A) thirty (30) days after the date of the certification under section 605 of this chapter; or

(B) on a date less than thirty (30) days:

(i) after the date of the certification under section 605 of this chapter; and

(ii) that is specified in the ordinance adopting the alternate procedure; or

(2) an unfavorable recommendation or no recommendation on the proposal, the proposal is defeated:

(A) thirty (30) days after the date of the certification under section 605 of this chapter; or

(B) on a date less than thirty (30) days:

(i) after the date of the certification under section 605 of this chapter; and

(ii) that is specified in the ordinance adopting the alternate procedure.

The plan commission shall notify the legislative body not later than the next business day after a proposal takes effect under subdivision (1) or is defeated under subdivision (2).

(c) If:

(1) any aggrieved person files with the plan commission a written request to have the final determination on the proposal made by the appropriate legislative body; or

(2) the legislative body files a notice with the plan commission that the legislative body shall make the final determination on the proposal;

the legislative body shall make the final determination on the proposal to change the zone map as set forth in section 608 of this chapter. The plan commission shall notify the legislative body in writing of a request under subdivision (1) not later than the next business day after receiving the request.

(d) A request or notice under subsection (c)(1) or (c)(2) must be filed not later than:

(1) twenty-nine (29) days after the date the favorable recommendation, the unfavorable recommendation, or no recommendation of the plan commission is certified under section 605 of this chapter; or

(2) on a date that is less than twenty-nine (29) days:



(A) after the date the favorable recommendation, the unfavorable recommendation, or no recommendation of the plan commission is certified under section 605 of this chapter; and

(B) that is specified in the ordinance adopting the alternate procedure.

SECTION 5. [EFFECTIVE JULY 1, 2016] (a) IC 36-7-4-602, IC 36-7-4-604, and IC 36-7-4-608, all as amended by this act, and IC 36-7-4-608.7, as added by this act, apply only to a proposal to amend a zone map incorporated by reference into the zoning ordinance that is received or initiated by the plan commission under IC 36-7-4-608(b) after June 30, 2016.

(b) This SECTION expires July 1, 2018.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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